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**FILED**

SEP 27 2012

STATE BAR COURT CLERK'S OFFICE  
SAN FRANCISCO

THE STATE BAR COURT  
HEARING DEPARTMENT – SAN FRANCISCO

11 In the Matter of  
12 FRANK IWAMA  
13 No. 45377  
14 A Member of the State Bar

Case Nos. 12-O-10519

**RESPONSE TO NOTICE OF  
DISCIPLINARY CHARGES**

17 FRANK IWAMA (hereinafter “Respondent”), by and through counsel Jonathan I. Arons  
18 and Alexis E. Gough, responds to the Notice of Disciplinary Charges filed on or about  
19 September 4, 2012 by the Office of the Chief Trial Counsel (“OCTC”) of The State Bar of  
20 California, as follows:

JURISDICTION

22 1. Admit.

COUNT ONE (A)

24 Case No. 12-O-10519  
25 Rules of Professional Conduct, rule 3-300  
26 [Business Transaction with a Client]

27 2. Deny.

28 3. Admit in part; deny in part. Respondent did not represent Mr. Lombardi as an  
individual party in a dispute with the federal government over a lease. Mr. Lombardi was a



1 member of Berryessa for ALL, a homeowner's association, that Respondent represented in a  
2 dispute with the federal government. Respondent admits that he obtained a loan in the amount of  
3 \$20,000 from Mr. Lombardi on January 8, 2009. Respondent admits that he obtained a loan in  
4 the amount of \$20,000 from Mr. Lombardi on July 1, 2009. Respondent denies that he obtained  
5 a loan in the amount of \$5,000 from Mr. Lombardi on March 11, 2010. Mr. Lombardi  
6 voluntarily paid \$5,000 to Respondent for professional services and assistance Respondent  
7 provided on behalf of Mr. Lombardi without charge.

8 4. Admit in part; deny in part. Mr. Lombardi voluntarily extended the term of the  
9 loan and directed Respondent to stop making monthly interest payments because Mr. Lombardi  
10 wanted to resolve payment and interest issues at a later date, after the conclusion of other  
11 pending matters for which Respondent represented him.

12 5. Deny. The loans were documented by written promissory notes and interest was  
13 set at the judgment rate of 10%.

14 6. Admit in part; deny in part. Mr. Lombardi was provided with a written  
15 promissory note with interest at 10%, judgment rate. The written promissory note disclosed the  
16 terms of the loan, which Mr. Lombardi acknowledged and signed. Mr. Lombardi, an  
17 experienced businessman, acknowledged to Respondent that he had vast experience in dealing  
18 with attorneys and had the right to seek the advice of independent counsel. Respondent provided  
19 adequate time to Mr. Lombardi to seek the advice of independent counsel. Mr. Lombardi  
20 consented to the loans by voluntarily signing the written promissory notes.

21 7. Admit. Respondent made monthly interest payments until Mr. Lombardi directed  
22 him to stop making them.

23 8. Deny. Mr. Lombardi modified the term of the loans, which terminated the one  
24 year agreement. Mr. Lombardi informed Respondent that he wanted to wait until other pending  
25 matters were concluded.

26 9. Deny.

27 COUNT TWO

28 Case No. 12-O-10519  
Rules of Professional Conduct, rule 4-100(A)

[Failure to Deposit Client Funds in Trust Account]

10. Deny.

11. Admit. Respondent performed professional services on behalf of Mr. Lombardi. Respondent filed a lawsuit, made numerous court appearances, represented Mr. Lombardi at trial, and obtained a court judgment in Mr. Lombardi's favor.

12. Admit. A paid mediation was scheduled despite Respondent's advice to Mr. Lombardi to move directly to a pending short cause court trial. Mr. Lombardi insisted that Respondent pursue a paid mediation despite the fees and costs involved. Mr. Lombardi agreed to pay for Respondent's fees required for the mediation process.

13. Admit in part; deny in part. Admit that Mr. Lombardi issued a check payable to Respondent in the amount of \$2,500. Deny that the check was for advanced costs to cover the mediator's fees. Mr. Lombardi's check was for professional services incurred and earned for the mediation. Respondent prepared briefs and prepared for and attended two scheduled mediation sessions at which the defendant failed to appear.

14. Deny. Respondent was not required to deposit the check into his Client Trust Account. The check was for fees already earned and therefore did not need to be deposited into the Client Trust Account.

15. Deny.

COUNT THREE

Case No. 12-O-10519  
Business and Professions Code, section 6106  
[Moral Turpitude – Misappropriation]

16. Deny.

17. See responses to paragraphs ten (10) through fifteen (15).

18. Deny. See responses to paragraphs ten (10) through fifteen (15).

19. Deny.

COUNT FOUR

Case No. 12-O-10519  
Rules of Professional Conduct, rule 4-100(B)(4)  
[Failure to Pay Client Funds Promptly]

1  
2 20. Deny.

3 21. See responses to paragraphs ten (10) through fifteen (15).

4 22. Admit.

5 23. Deny. Although Mr. Lombardi paid for Respondent's fees for mediation services,  
6 Respondent fully refunded those fees in connection to the mediation per Mr. Lombardi's request.  
7 Respondent had no obligation to do so as the fees were earned.

8 24. Deny. See response to paragraph twenty-three (23).

9 25. Admit in part; deny in part. Admit that Mr. Lombardi sent letters requesting the  
10 \$2,500 returned. Deny that Respondent failed to return the monies. See responses to paragraphs  
11 twenty-three (23) and twenty-four (24).

12 26. Admit. Respondent issued a check in the amount of \$1,000 as a voluntary  
13 repayment of the earned mediation fees.

14 27. Admit. Respondent issued a check in the amount of \$900 as a voluntary  
15 repayment of the earned mediation fees.

16 28. Deny. Respondent voluntarily repaid the remaining \$600 of the earned mediation  
17 fees.

18 29. Insufficient information to admit or deny.

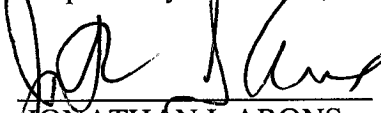
19 30. Admit in part; insufficient information to admit or deny in part. Respondent does  
20 not know when a State Bar investigator sent him a letter, however Respondent did receive the  
21 letter.

22 31. Admit in part; deny in part. Respondent admits that he sent a check in the amount  
23 of \$600, however the amount represented Respondent's earned fees in connection with the  
24 mediation, not the mediator's fees.

25 32. Deny.

26  
27 Date: September 27, 2012

Respectfully Submitted,

  
JONATHAN I. ARONS  
Attorney for Frank Iwama

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## PROOF OF SERVICE

I am a citizen of the United States of America, over eighteen (18) years of age, employed in the City and County of San Francisco, and not a party to this action. My business address is 221 Main Street, Suite 740, San Francisco, California 94105. On September 27, 2012 I caused the attached:

### RESPONSE TO NOTICE OF DISCIPLINARY CHARGES

To be served on the party or its attorney of record in this action by:

- ☐ U.S. Mail, enclosing a copy in a sealed envelope, postage prepaid, Addressed as shown below and depositing the sealed envelope with the United States Postal Service.
- ☒ By Personal Delivery, serving or causing to be served each document by Hand Delivery to the address listed below.
- ☐ By Overnight Service, enclosing a copy in a sealed envelope addressed as shown below and sending the envelope by overnight delivery service.
- ☐ U.S. Mail, enclosing a copy in a sealed envelope, with first class, certified mail, return receipt requested, postage thereon fully prepaid, addressed as shown below and depositing the sealed envelope with the United States Postal Service.

Name and address of each individual to whom document was mailed or delivered:

**ERICA DENNINGS**  
Office of the Chief Trial Counsel  
State Bar of California  
180 Howard Street  
San Francisco, CA 94105

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. This declaration was executed on September 27, 2012 at San Francisco, California.

  
ALEXIS GOUGH